

**Due to Executive Order N-25-20 Members of the Council may  
Teleconference into the meeting.**



**CITY OF BELL GARDENS**

**CITY COUNCIL**

**SPECIAL MEETING**

**THURSDAY, APRIL 9, 2020**

**12:30 pm**

**AGENDA**

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On March 17, 2020, Governor Newsom issued Executive Order N-29-20 (superseding the Brown Act-related provisions of Executive Order N-25-20 issued on March 12, 2020), which allows a local legislative body to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Pursuant to Executive Order N-29-20, please be advised that members of the Bell Gardens City Council will participate in meetings telephonically. The public may view the meeting online. The Council Chamber is closed to the public at this time.

**ACCESSIBILITY:** If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, in order to observe and/or offer public comment may request such reasonable modification, accommodation, aid, or service by contacting Jane Halstead, City Clerk by telephone at 562-806-7705 or via email to [CityClerkDesk@bellgardens.org](mailto:CityClerkDesk@bellgardens.org) no later than one (1) hour before the scheduled meeting.

**CALL TO ORDER**

**INVOCATION**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL OF CITY COUNCIL MEMBERS**

Pedro Aceituno, Council Member

Marco Barcena, Council Member

Vacant, Council Member

Liseth Flores, Mayor Pro Tem

Alejandra Cortez, Mayor

**PUBLIC COMMENTS ON AGENDA ITEMS ONLY**

**(Three minutes per person, subject to a total period of 30 minutes)**

**PUBLIC PARTICIPATION:** Pursuant to Executive N-29-20 and given the current health concerns, members of the public can access meetings live at [www.bellgardens.org/i-want-to/watch-city-council-meetings](http://www.bellgardens.org/i-want-to/watch-city-council-meetings) or at (562) 806-8922 and use code 2222. In addition, members of the public can submit comments electronically for consideration by the City Council by sending them to [cityclerkdesk@bellgardens.org](mailto:cityclerkdesk@bellgardens.org). To ensure distribution to the members of the City Council prior to consideration of the agenda, please submit comments no later than one (1) hour prior to the meeting. Those comments, as well as any comments received after, will be distributed to the members of the City Council and will be made part of the official public record of the meeting. If you would like to make your comments telephonically during the City Council Meeting, please call the City Clerk's office at 562-806-7700 no later than one (1) hour prior to the meeting to let staff know you would like to make a comment during the meeting. Staff will call you during the meeting at the appropriate time. Contact Jane Halstead, City Clerk at 562-806-7705 or the receptionist's desk at 562-806-7700 for any questions.

## **DISCUSSION**

### **1. URGENCY ORDINANCE ESTABLISHING AN EVICTION MORATORIUM FOR COMMERCIAL BUSINESSES**

A discussion to consider and approve an urgency moratorium ordinance on evictions for the non-payment of rent due to the COVID-19 crisis, which provides coverage to affected commercial tenancies and establishes a back-rent repayment period.

#### **Recommendation:**

It is staff's recommendation that the City Council approve the Urgency Moratorium Ordinance by a 4/5 votes.

## **CITY COUNCIL MEMBER COMMENTS**

## **ADJOURNMENT**

Posted by: Jane Halstead, City Clerk Date: \_\_\_\_\_



**CITY OF BELL GARDENS  
OFFICE OF THE CITY MANAGER**

**AGENDA REPORT**

Item 1.

<b>TO:</b>	Honorable Mayor and City Council Members
<b>FROM:</b>	Michael B. O'Kelly, City Manager
<b>BY:</b>	Michael B. O'Kelly, City Manager Gustavo Romo, Director of Community Development
<b>SUBJECT:</b>	<b>URGENCY ORDINANCE ESTABLISHING AN EVICTION MORATORIUM FOR COMMERCIAL BUSINESSES</b>
<b>DATE:</b>	April 9, 2020

**RECOMMENDATION:**

It is staff's recommendation that the City Council approve the Urgency Moratorium Ordinance by a 4/5 votes.

**BACKGROUND/DISCUSSION:**

Given the severe and unprecedented nature of the novel coronavirus (COVID-19) pandemic outbreak, Federal, State and local authorities have declared emergency conditions and protocols to halt the spread of the virus.

At its Special Meeting of March 17, 2020, the City of Bell Gardens adopted a resolution declaring a local emergency due to the public threat caused by COVID-19.

On March 27, 2020, the Governor issued Executive Order N-37-20, which places a statewide moratorium on evictions of residential tenants subject to certain conditions. These protections, however, do not extend to commercial tenancies nor do they provide any sort of grace period for commercial tenants to repay the back-rent that accrues during the moratorium period.

The attached Ordinance establishes a moratorium that is set to expire on May 31, 2020, on evictions for affected commercial tenants, where it can be established the nonpayment of rent is attributable to a "financial impact" that has resulted from COVID-19, including but not limited to the following:

1. Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
2. Income reduction resulting from business closure, curtailment of business operations or other economic or employer impacts of COVID-19;
3. Layoff or furlough of employees of the business;
4. Compliance with a recommendation from a government health authority to stay at home, self-quarantine, or avoid congregating with others during the State emergency;
5. Extraordinary out-of-pocket business or medical expenses; or

6. Childcare needs arising from school closures related to COVID-19.

**CONCLUSION:**

Due to the lack of protection afforded for commercial tenants under the Governor's Executive Order N-37-20, Staff believes it is in the City's best interest to adopt this Urgency Moratorium Ordinance.

**FISCAL IMPACT:**

It is not evident that the moratorium Urgency Ordinance will result in any sort of immediate or clearly identifiable cost to the City as most of its provisions require engagement between tenant and the landlord.

**ATTACHMENTS:**

Exhibit 1 - Ordinance 904-U

**APPROVED ELECTRONICALLY BY:**

Michael B. O'Kelly, City Manager

Stephanie Vasquez, Assistant City Attorney for Rick R. Olivarez, City Attorney

Will Kaholokula, Director of Finance and Administrative Services

## **URGENCY ORDINANCE NO. 904-U**

### **AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELL GARDENS, CALIFORNIA ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO THE NONPAYMENT OF RENT FOR COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19)**

WHEREAS, in late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness; and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19; and

WHEREAS, on March 11, 2020, WHO publicly characterized COVID-19 as a pandemic; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 which suspends “[a]ny provision of state law that would preempt or otherwise restrict a local government’s exercise of its police power to impose substantive limitations on residential or commercial evictions ... including, but not limited to, any such provision of Civil Code Sections 1940 et seq.” to the extent such provisions would otherwise restrict such exercise; and

WHEREAS, on March 16, 2020, the County of Los Angeles Department of Public Health ordered the closure of all gyms, bars, and ordered all restaurants to close their sit-in areas and offer take-out or delivery services only; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 to affirm the directives of the March 19, 2020 Memorandum on identification of Essential Critical Infrastructure Workers During COVID-19 Response; and

WHEREAS, on March 19, 2020, the County of Los Angeles Department of Public Health issued a Mandatory Safer at Home Order, ordering the closure of all non-essential businesses until April 19, 2020, then issued a Revised Order on March 21, 2020 to align with the Governor of California’s March 19<sup>th</sup> order; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 ("Executive Order N-37-20") which prevents evictions for a period of sixty (60) days of "a tenant from a residence or dwelling unit for nonpayment of rent" who satisfies requirements set forth in said order; and

WHEREAS, as of April 3, 2020, the State of California has identified 10,701 cases of COVID-19 in Los Angeles County and resulting in two hundred thirty-seven (237) deaths; and

WHEREAS, the COVID-19 pandemic has resulted in the closure of many businesses, which has led to hourly cutbacks and has already resulted in employee terminations; and

WHEREAS, this Urgency Ordinance enacts a temporary moratorium intended to promote stability and fairness within the commercial rental market in the City of Bell Gardens (the "City") during the COVID-19 pandemic outbreak; and

WHEREAS, promoting stability among commercial tenancies is conducive to public health, allowing businesses to follow the advice and directives of public health officials to close, and allowing employees to avoid public contact, during times of a public health crisis without fear of imminent eviction; and

WHEREAS, Government Code Sections 36934 and 36937(b) authorize the City to adopt an Urgency Ordinance for the immediate preservation of the public peace, health and safety, provided that such Urgency Ordinance is passed by a four-fifths vote of the City Council.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELL GARDENS, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The recitals above are true and correct and incorporated herein by reference.

**SECTION 2. Title.** This Urgency Ordinance shall be known as the "COVID-19 Commercial Tenant Eviction Moratorium Ordinance."

**SECTION 3. Urgency Findings.** The purpose of this Urgency Ordinance is to promote stability among commercial tenancies which is conducive to public health, allowing businesses to follow the advice and directives of public health officials to close, and allowing employees to avoid public contact, during times of a public health crisis without fear of imminent eviction. This Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety because the COVID-19 pandemic has the potential of destabilizing the commercial rental market for all of the reasons described herein. The temporary moratorium on evictions for non-payment imposed by this Urgency Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

#### **SECTION 4. Definitions**

- A. "Affected Tenant" means any non-residential (i.e., commercial, industrial, office) business tenant who satisfies one or more of the criteria in Section 8, of this Urgency Ordinance, below.
- B. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit.
- C. "Notice of Termination" shall mean the notice informing a commercial business of the termination of its tenancy in accordance with California Civil Code Section 1946.1 and California Code of Civil Procedure Section 1161, as amended.
- D. "Rental Unit" means a building, structure or part of a structure that is used for a legally permitted and duly licensed business or other non-residential service or activity (e.g., commercial, industrial, professional office, entertainment, recreational and/or retail uses, etc.).
- E. "Tenant" means any non-residential (i.e., commercial, industrial, office) tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupy a Non-Residential Rental Unit.

**SECTION 5. Application.** This Urgency Ordinance applies to Affected Tenants in any non-residential Rental Unit and Landlords of Affected Tenants.

#### **SECTION 6. Moratorium on Eviction and Termination of Tenancies for Affected Tenants.**

- A. This ordinance shall terminate on May 31, 2020, unless further extended by action of the City Council through the adoption of an Urgency Ordinance extending this ordinance. During the term of the moratorium established under this Urgency Ordinance, a Landlord shall not serve a notice pursuant to California Code of Civil Procedure Sections 1161 or 1162, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise endeavor to evict an Affected Tenant for nonpayment of rent.
- B. The moratorium established under this Urgency Ordinance is intended to have greater scope and longer duration than the moratorium established under Executive Order N-37-20.

#### **SECTION 7. Just Cause Termination.**

- A. The provisions of Section 8 of this Urgency Ordinance, notwithstanding, a Landlord, subject to compliance with the requirements of this Urgency Ordinance, may terminate the tenancy of a Tenant who otherwise qualifies as

an Affected Tenant if a Landlord can show any of the following circumstances apply thereby rendering the termination a “Just Cause Termination”:

1. Nuisance Behavior. The Affected Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City, including but not limited to regulations established by ordinance or resolution.
2. Refusing Access to the Unit. The Affected Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code Section 1954, as amended.
3. Unapproved Holdover Subtenant. The Affected Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.
4. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the Bell Gardens Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as may be required by applicable state law.
5. Vacation of Unpermitted Rental Unit. The Landlord seeks in good faith to recover possession of an unpermitted Rental Unit in order to end the unpermitted use.
6. Criminal Activity.
  - a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d, below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:
    - i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.
    - ii. Removing the Violating Tenant from the household and providing written notice to the Landlord that the Violating Tenant has been



removed.

- b. For purposes of this subsection 6, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within 1,000 feet of the premises on which the Rental Unit is located.
- c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.
- d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

**B. Relocation Assistance and Deposits.**

- 1. Nothing in this ordinance shall operate to relieve a Landlord from paying relocation assistance to an Affected Tenant where required by applicable state law. Such assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.
- 2. Refund of Security Deposit. A landlord shall refund to the Tenant Household any security deposit paid by the Tenant Household, provided however, that the Landlord may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code Section 1950.5, as amended.

**SECTION 8. Affirmative Defense to Eviction; Penalties and Remedies.**

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Urgency Ordinance. Non-compliance with any applicable component of this Urgency Ordinance shall constitute an affirmative defense for an Affected Tenant against any unlawful detainer action under California Code of Civil Procedure Section 1161, as amended. To assert this defense and to establish Affected Tenant status, a Tenant shall have first notified the Landlord in writing before rent is due, or within a reasonable period of time afterwards not to exceed thirty (30) calendar days, that the Tenant needs to delay all or some payment of rent attributable to an inability to pay the full amount due to financial impacts of lost business income resulting from the novel coronavirus (COVID-19) pandemic, including but not limited to the following:
  - 1. Being sick with COVID-19, or caring for a household or family member who

is sick with COVID-19;

2. Income reduction resulting from business closure, curtailment of business operations or other economic or employer impacts of COVID-19;
  3. Layoff or furlough of employees of the business;
  4. Compliance with a recommendation from a government health authority to stay at home, self-quarantine, or avoid congregating with others during the State emergency;
  5. Extraordinary out-of-pocket business or medical expenses; or
  6. Childcare needs arising from school closures related to COVID-19.
- B. Along with the notification referenced under paragraph A of this section, above, the Affected Tenant must also include true and correct copies of verifiable documentation that reasonably corroborate any or all of the permitted reasons for the non-payment of rent under paragraph A of this section, above.
- C. Obligation of Affected Tenant to pay unpaid rent. Nothing in this Urgency Ordinance shall relieve an Affected Tenant of liability for any unpaid rent following the expiration of the moratorium established under this Urgency Ordinance. The foregoing notwithstanding and except as otherwise agreed to in writing by the Affected Tenant and the Landlord, the Affected Tenant shall be given a period of ninety (90) calendar days to pay all unpaid back-rent. During the 90-day period, the protections against eviction found in this Urgency Ordinance shall apply for such Affected Tenants and provided the Affected Tenant pays all rent due by this deadline.
- D. Civil Remedies
1. Any Landlord that fail(s) to comply with this Urgency Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected Tenant for actual and exemplary damages.
  2. Whoever is found to have violated this Urgency Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
  3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Urgency Ordinance.
  4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

**SECTION 9. Environmental.** This Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (Cal. Code Regs., tit.14, § 15378, subd. (a).) Further, this Urgency Ordinance is exempt from CEQA as there is no possibility that it or its implementation would have a significant negative effect on the environment. (Cal. Code Regs., tit.14, § 15061, subd. (b)(3).)

**SECTION 10. Inconsistent Provisions.** Any provision of the Bell Gardens Municipal Code or appendices thereto inconsistent with the provisions of this Urgency Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

**SECTION 11. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

**SECTION 12. Construction.** The City Council intends this Urgency Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Urgency Ordinance shall be construed in light of that intent. To the extent the provisions of the Bell Gardens Municipal Code as amended by this Urgency Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Urgency Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 13. Publication and Effective Date.** This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code Sections 36934 and 36937 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the City Council. The City Clerk shall cause this Urgency Ordinance to be published or posted within fifteen (15) days after its adoption.

**PASSED, APPROVED, AND ADOPTED** this 9<sup>th</sup> day of April 2020.

**THE CITY OF BELL GARDENS**

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Alejandra Cortez, Mayor

**APPROVED AS TO FORM:**

**ATTEST:**

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Rick Olivarez  
City Attorney

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Jane Halstead  
City Clerk

STATE OF CALIFORNIA       )  
COUNTY OF LOS ANGELES   )  
CITY OF BELL GARDENS       )       SS:

I, Jane Halstead, City Clerk of the City of Bell Gardens, hereby certify that the foregoing Urgency Ordinance No.904-U was passed and adopted by the City Council of the City of Bell Gardens, signed by the Mayor and attested by the City Clerk at a Special meeting of said Council held on the 9<sup>th</sup> day of April, 2020 and that said Urgency Ordinance was adopted by the following votes, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Jane Halstead, City Clerk,  
City of Bell Gardens